

REMARKS**I. Status of the Application**

Claims 9-28 are pending in this application. In the May 14, 2008 Office action, the Examiner rejected claims 9-28 under 35 U.S.C. § 103(a) as allegedly being anticipated by U.S. Patent no. 6,292,492 B1 to Bonomi et al. (hereinafter “Bonomi”) in view of U.S. Patent no. 5,636,345 to Valdevit et al. (hereinafter “Valdevit”).

In this response, Applicant has amended claims 9, 10, 17, 18, 20, 21, 23, 24, 25, and 26-28. Support for the amendments may be found in the specification and claims as originally filed, including, for example, original claim 1, and specification page 2, lines 5-12. Claims 12, 13, 15, 16, 19 and 22 have been cancelled. As set forth below, Applicant respectfully traverses the Examiner’s rejection of claims 9-28.

**II. The Rejection of Independent Claims 9, 17 and 25 Under 35 U.S.C. § 103(a)****Should Be Withdrawn**

In the May 14, 2008 Office action, the Examiner rejected claims 9, 17 and 25 under 35 U.S.C. § 103(a) as allegedly being obvious and unpatentable over Bonomi in view of Valdevit. In this response, Applicant respectfully traverses the Examiner’s rejection of claims 9, 17 and 25 under 35 U.S.C. § 103(a), as the examiner has not made a *prima facie* case of obviousness as described in MPEP § 2142 - 2143.

The Examiner’s rationale for a finding of obviousness in the May 14, 2008 Office action is not specifically stated in the context of the examples of MPEP § 2143. However,

Applicant notes that pursuant to MPEP 2143, **“the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.”** Furthermore, in order to establish a *prima facie* case of obviousness, three basic criteria should be met as set forth in MPEP § 2143.01-2143.03. First, all claim limitations must be considered. MPEP § 2143.03. Second, there must be some suggestion or motivation to modify the references or combine reference teachings. MPEP § 2143.01. Third, there must be a reasonable expectation of success. MPEP § 2143.02.

A. The References Do Not Teach or Suggest All Claim Limitations

In the present case, it is respectfully submitted that neither Bonomi nor Valdevit teach or suggest all the limitations of amended claims 9, 17 or 25. One example of a limitation of claims 17 and 25 that is not taught or suggested by the cited references is that of “deriving a measure of the length of the at least one *ingress* queue”. As discussed below, Bonomi only appears to teach obtaining a measure of an *egress* queue.

A related limitation of claim 9 not taught or suggested by the cited references is that of a “broadcast packet control unit configured to operate in a broadcast storm control mode if the obtained measure of the length of the at least one ingress queue rises above a first predetermined level before the data packets are queued in the at least one ingress queue, wherein the broadcast packet control unit is configured to only admit broadcast packets to the at least one ingress queue when not in broadcast storm control mode.”

1. The Disclosure of the Present Application

At least one embodiment disclosed in the present application relates to determining whether or not to operate in broadcast storm control mode depending on the ingress queue length, i.e., by deleting incoming packets before the packets are stored in the ingress queue. Broadcast or multicast packets have a higher potential to delay the data switch and therefore, by deleting them before being stored in the ingress queue, the ingress queue length and the speed of the switch can be effectively managed. Claims 1, 17 and 25 all include limitations that are at least related to this broadcast storm control mode.

2. Bonomi

Bonomi appears to disclose deleting packets which are already in the ingress queue (see col. 3 lines 53-63 of Bonomi) depending on the *egress* queue length (see col. 5 lines 1-12 of Bonomi). Therefore Bonomi does not disclose broadcast storm control before the packet is stored in the ingress queue and does not disclose broadcast storm control based on the *ingress* queue length.

3. Valdevit

Valdevit appears to delete packets based on the spacing between packets (see Figure 6 and col. 11 lines 6-33 of Valdevit). Therefore Valdevit does not disclose broadcast storm control based on the ingress queue length.

#### 4. The Combination of Valdevit and Bonomi

As set forth above, neither Bonomi nor Valdevit, alone or in combination, disclose all the limitations of amended claims 9, 17 and 25. In particular, **neither Bonomi nor Valdevit disclose the limitation of “deriving a measure of the length of the at least one *ingress* queue”** (emphasis added) as set forth in claims 17 and 25. Similarly, neither Bonomi nor Valdevit disclose the limitation of claim 9 of a “broadcast packet control unit configured to operate in a broadcast storm control mode if the obtained measure of the *length* of the at least one *ingress* queue rises above a first predetermined level before the data packets are queued in the at least one ingress queue, wherein the broadcast packet control unit is configured to only admit broadcast packets to the at least one ingress queue when not in broadcast storm control mode” (emphasis added).

As set forth above, neither Bonomi nor Valdevit, alone or in combination, disclose all the limitations of independent claims 9, 17 and 25. Accordingly, it is respectfully submitted that the Examiner has not made a *prima facie* case of obviousness and the 35 U.S.C. 103(a) rejection of claims 9, 17 and 25 should be withdrawn.

#### B. There is no Motivation to Combine Bonomi and Valdevit

The Examiner’s additional information provided in the Advisory Action is acknowledged. However, it is respectfully submitted that the Examiner still has not shown how either reference has suggested a nexus between *ingress queue length* and *preventing broadcast storms*. The Examiner only notes that Bonomi teaches monitoring queue length and that Valdevit teaches preventing broadcast storms. (Advisory Action at pp.2-3). Nothing

suggests that those two technologies could be combined in a useful way. The Examiner merely argues that “The motivation would have been to prevent broadcast storm based on the length of the queues...” This merely recites the missing claim element, not a motivation provided by the prior art.

The remainder of the argument from the Response to Final Office Action is set forth below to be maintained on the record.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless “there is some teaching, suggestion or motivation” to combine the references. MPEP § 2143.01. Applicants respectfully submit that, while Bonomi and Valdevit could be combined, the examiner has not established a teaching, suggestion or motivation for combining the references. Furthermore, the examiner has not established that the proposed resultant combination would have been predictable to one of ordinary skill in the art, as required by MPEP § 2143.01. As set forth in MPEP § 2143.01, “rejections based on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with rational underpinning to support the legal conclusion of obviousness.” “The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious ... [and] the analysis supporting the rejection under 35 U.S.C. § 103 should be made explicit.” MPEP § 2143.

At page 11 of the May 14, 2008 Office action, the examiner provides only the following rationale for the combination of Bonomi and Valdevit: “it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify

the features of Bonomi et al. by using features as taught by Valdevit et al. in order to provide protection against broadcast storm as suggested by Valdevit in col. 2, lines 56 to col. 3, lines 15.” However, col. 2 line 56 to col. 3 line 15 of Valdevit merely states that malfunctions in switches may cause spurious broadcast messages, referred to as broadcast storms. This statement in Valdevit would not motivate one of ordinary skill in the art as at the date of invention to modify Bonomi with the teachings of Valdevit as alleged by the examiner. Applicant respectfully submits that this rationale provided by the examiner for combining Bonomi and Valdevit is nothing more than a conclusory statement. Should the examiner continue to reject claims 9, 17 or 25 for any reason, applicant respectfully submits that a “*clear articulation*” of why the combination of Bonomi and Valdevit would be obvious should be provided along with an *explicit* analysis.

For at least the reason set forth above, it is respectfully submitted that the examiner has not made a prima facie case of obviousness. Accordingly, it is respectfully submitted that the examiner’s rejection of claims 9, 17 and 25 under 35 U.S.C. § 103(a) should be withdrawn.

C. A Reasonable Expectation of Success Has Not Been Established

In order to establish a prima facie case of obviousness, the examiner must at least articulate a finding that there was reasonable expectation of success. See MPEP § 2143(G) and MPEP § 2143.02. However, in the May 14, 2008 office action, the examiner did not even attempt to establish such a finding of a reasonable expectation of success. Therefore, for at

least this reason, the examiner has not made a prima facie case of obviousness, and the examiner's rejection under 35 U.S.C. § 103(a) should be withdrawn.

**III. The Rejection of Dependent Claims**  
**10, 11, 14, 18, 20, 21, 23, 24, and 26-28 Should be Withdrawn**

Dependent claims 10, 11, 14, 18, 20, 21, 23, 24, and 26-28 all depend from and incorporate all the limitations of one of independent claims 9, 17 or 25. Moreover, each of these dependent claims includes additional novel and non-obvious limitations. Accordingly, it is respectfully submitted that dependent claims 10, 11, 14, 18, 20, 21, 23, 24, and 26-28 are also allowable for at least the same reasons that independent claims 9, 17 and 25 are allowable, as well as additional reasons. Therefore, the examiner's rejection of dependent claims 10, 11, 14, 18, 20, 21, 23, 24, and 26-28 should also be withdrawn.

**IV. Conclusion**

For all of the foregoing reasons, it is respectfully submitted that applicant have made a patentable contribution to the art. Favorable reconsideration and allowance of this application, including claims 9, 10, 11, 14, 17, 18, 20, 21, and 23-28, is therefore respectfully requested.

Respectfully submitted,



Harold C. Moore  
Attorney Registration No. 37,892

Please address correspondence to:

Harold C. Moore  
Maginot Moore & Beck  
Chase Tower  
111 Monument Circle, Suite 3250  
Indianapolis, Indiana 46204-5109

Telephone: (317) 638-2922  
Facsimile: (317) 638-2139  
Email: [hcmoores@maginot.com](mailto:hcmoores@maginot.com)